

Exhibit C

VOLUME 3

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable YVONNE GONZALEZ ROGERS, Judge

EPIC GAMES, INC.,)	
)	
Plaintiff,)	NO. C-20-5640 YGR
)	
vs.)	Wednesday, May 5, 2021
)	
APPLE, INC.,)	Oakland, California
)	
Defendant.)	BENCH TRIAL
)	
APPLE, INC.,)	
)	
Counterclaimant,)	
vs.)	
)	
EPIC GAMES, Inc.,)	
)	
Counter-Defendant.)	
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

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**BY: KATHERINE B. FORREST, ESQUIRE
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(Appearances continued.)

Reported By:

Diane E. Skillman, CSR 4909, RPR, FCRR
Official Court Reporter

1 like -- I'm -- sustained. Just because something is in the
2 press doesn't make it true.

3 **THE WITNESS:** I think it's part of their financial
4 reporting.

5 **THE COURT:** Okay.

6 **MR. EARNHARDT:** Okay. I'll move on, Your Honor.

7 **Q.** Let me show you another document. If you could look at
8 your binder. Actually -- look at your binder. Turn to tab
9 DX5523.

10 **THE COURT:** And to the point, if you want to show her
11 a financial statement, that's -- that is admissible evidence.

12 **MR. EARNHARDT:** Yeah, of course, Your Honor. We can
13 do that with a different witness.

14 **Q.** This is another document that has redactions so we will go
15 very slowly, and I will be careful not to ask inappropriate
16 questions, and don't volunteer information that you see
17 because it may be redacted.

18 **A.** Okay.

19 **Q.** My first question is do you recognize this document?

20 **A.** I do.

21 **Q.** What is it?

22 **A.** It is a report that is built by our Business Planning and
23 Strategy Team, and it does a market look at where profits come
24 from in the game industry.

25 **Q.** And did you receive this document in the ordinary course

1 of business?

2 A. I did.

3 **MR. EARNHARDT:** Move to admit DX5523, Your Honor.

4 **THE COURT:** Any objection?

5 **MR. SRINIVASAN:** No objection, Your Honor.

6 **THE COURT:** Admitted.

7 (Defendant's Exhibit 5523 received in evidence)

8 **BY MR. EARNHARDT:**

9 Q. If you could turn to slide 31. This is a circumstance in
10 which we are going to be very careful.

11 A. Okay.

12 Q. So don't say any numbers.

13 At a very, very high level, what does this slide show?

14 A. The profit breakdown on consoles.

15 Q. And, again -- well, do you see section 7 near the bottom
16 that says "total hardware"?

17 A. I do.

18 Q. And, again, I don't want you to say it out loud, but do
19 you see the number that has been blotted out on the screen but
20 is clear in your book next to Microsoft under the margin
21 percentage?

22 A. I do.

23 Q. And does that number state the Xbox console operating
24 margin as of 2019?

25 A. It does.

1 **Q.** And if you can turn to slide 17.

2 This is another slide in which a lot of information has
3 been redacted, so please don't read any specific numbers on
4 the page, but do you see the title of this slide as "PC Client
5 Revenues by Sales Channel"?

6 **A.** Yes.

7 **Q.** And do you see near the top where it says, "In PC client,
8 direct to consumer captured more than 83 percent of spend
9 while platforms generated approximately 15 percent of sales"?

10 **A.** Yes.

11 **Q.** What does that mean?

12 **A.** This means that for people buying games on PCs, that they
13 are going directly to the publisher or developer to get that
14 game on PC and spending the money with them. The platforms,
15 whether it's a subscription or through a store only, generated
16 15 percent of the sales.

17 **Q.** On PC?

18 **A.** Correct.

19 **Q.** So just to make sure I understand, publishers are able to
20 distribute their apps directly to consumers on Windows PC?

21 **A.** That's correct.

22 **Q.** And based on this, what percentage of the revenue in the
23 PC ecosystem is derived from that method of distribution?

24 **A.** 83 percent.

25 **Q.** On iOS, can developers distribute their apps directly to

1 users?

2 A. They cannot.

3 Q. If you could please turn to slide 11. And, again, there
4 is information that's been sealed here so we will be very
5 careful.

6 What does this slide show?

7 A. The publisher versus platform share of profit by segment.

8 Q. And based on this, what is the percentage of the profit
9 share that app publishers retain on PC?

10 A. On PC, app publishers retain 95 percent of the profit.

11 Q. And what is that percentage on mobile?

12 A. 61 percent.

13 Q. Do you see near the top of this slide it says,
14 "Platform-holders in closed device ecosystems and networks
15 capture meaningful profit share, 39 to 46 percent, while open
16 ecosystems favor publishers"?

17 A. I do.

18 Q. What is a closed ecosystem?

19 A. A closed ecosystem would be Xbox as a console or iOS.

20 Q. And what makes that closed?

21 A. Because you cannot distribute games through any other
22 method.

23 Q. And then what is an open ecosystem?

24 A. You can -- you have competing ways to distribute games.

25 Q. How does competition for distribution of games compare in

1 an open ecosystem to a closed ecosystem?

2 **A.** An open ecosystem is much more profitable for developers
3 and publishers.

4 **Q.** If you can turn to slide 3. Bullet 2 there reads,
5 "Publishers captured the majority of total industry profit, 66
6 percent. Platforms in closed ecosystems/networks, e.g.,
7 console, mobile, browser, generated 39 to 46 percent of
8 segment profits while platforms in open ecosystems, i.e., PC
9 client, generated only 5 percent of segment profit."

10 Do you see that?

11 **A.** I do.

12 **Q.** And then the next bullet reads, "Platforms relatively low
13 share of PC client segment profit, 5 percent, reflects revenue
14 flowing directly from consumers to publishers. 83 percent of
15 worldwide PC client revenue"?

16 **A.** Yes, I see that.

17 **Q.** Is that consistent with your understanding of how the
18 market dynamics are?

19 **A.** Yes, it is.

20 **Q.** And then if you turn back to slide 11, under the --
21 there's a big heading, sub-heading, then a tiny sub-heading.
22 Focusing on the tiny sub-heading, it says, "U.S. dollar
23 billions" redacted. Don't say the number. "Software and
24 services profit only excludes five billion in game video
25 profit and dedicated hardware profit." Do you see that?

1 **A.** I do.

2 **Q.** Does that mean that the bars on this chart exclude profits
3 from the sale of iPhones in the mobile column?

4 **A.** I'm sorry. I'm reading this again.

5 Yes, it does.

6 **Q.** And if you could turn to slide 9 for me, please. And,
7 again, I don't want you to read this out loud. But do you see
8 where footnote 1 is located?

9 **A.** I do.

10 **Q.** And can you read footnote 1 to yourself. Do not read it
11 out loud.

12 **A.** (Witness reads document.)

13 Yes. I see it.

14 **Q.** Is that consistent with your understanding?

15 **A.** Yes, it is.

16 **Q.** Okay. You can put that aside.

17 **THE COURT:** So with respect to this, I suspect I
18 won't remember -- I said with respect to this, what I have
19 appropriately is the unredacted version. What I don't have is
20 the highlighted redacted version, and in order to make sure
21 that I don't inadvertently mention something in an order that
22 has been redacted, I need you all to give me a highlighted
23 version of this.

24 **MR. EARNHARDT:** We will do that, Your Honor.

25 **THE COURT:** Thank you. Proceed.

1 **Q.** But you also said you had some internal documents. Don't
2 you also have internal Microsoft documents relating to your
3 dealings with Apple on the streaming business?

4 **A.** Sure. There is emails on -- on the correspondence. Most
5 of it culminated in what we shared with Apple, yes.

6 **Q.** I think you said you even have notes taken by your team at
7 Microsoft regarding at least one meeting you had with Apple.
8 That was shared with you; correct?

9 **A.** There was an email, I believe, that summarized our meeting
10 in Cupertino the first time.

11 **Q.** And in fact those kind of notes -- nobody at Apple would
12 have those notes. Those are internal to Microsoft; right?

13 **A.** They would reflect the -- it truly was a sequence of the
14 conversation that Apple was part of, yes.

15 **Q.** Okay. And you didn't produce any of these documents in
16 advance of your deposition, did you, ma'am?

17 **A.** I don't know what was produced.

18 **Q.** Okay. Well, did you provide the documents to anybody?

19 **A.** Did I provide them? No -- ah, no.

20 **Q.** Nobody even asked you for them; correct?

21 **A.** No.

22 **Q.** Okay. And you also said you might have -- you also have
23 files potentially regarding communications you have had with
24 Epic; right?

25 **A.** I have not had communications with Epic. Personally it's

1 not part of my job responsibility.

2 **Q.** The question was whether you have any documents, not
3 necessarily communications from you, but communications with
4 Epic from anybody at Microsoft?

5 **A.** I don't know that to be true.

6 **Q.** Okay. But you didn't look for those?

7 **A.** I did not.

8 **Q.** Okay. And who is Phil Spencer?

9 **A.** Phil is the Executive Vice-President of Gaming at
10 Microsoft.

11 **Q.** And you have spoken -- you have had at least one
12 conversation with Mr. Spencer about a conversation he had with
13 Mr. Sweeney about Apple's App Store; correct?

14 **A.** I did not have a conversation with Phil about that, no. I
15 remember I think the question was asked in the deposition on
16 do I recall any conversations, and I said while I don't have
17 direct knowledge or email on it, I remember at one point in
18 some forum Phil mentioning he had gotten a note from
19 Mr. Sweeney.

20 **Q.** So you had some communication with Mr. Spencer on it;
21 correct?

22 **A.** I was involved in a forum where Mr. Spencer had mentioned
23 it.

24 **Q.** Okay. And did you look for any emails regarding that
25 interaction with -- between Mr. Spencer and Mr. Sweeney?

1 people from Microsoft from Xbox.

2 Q. And that meeting was about trying to get xCloud on the
3 service; correct?

4 A. Correct.

5 Q. Yeah. Okay.

6 And those are the notes that you didn't turn over; right?

7 A. But the notes are a recap of the discussion that everyone
8 in that conversation was privy to. They did not contain any
9 other commentary.

10 Q. So that's a yes, you didn't turn them over?

11 A. It's a yes, I did not supply that email to anyone.

12 Q. Right. You didn't send it to Apple either?

13 A. I don't know that. It's actually a good question. I
14 haven't gone back to say did that email -- it very likely
15 could have gone to Apple.

16 Q. And did you have internal discussions with your colleagues
17 about this whole process?

18 A. Oh, sure.

19 Q. And at some point, Microsoft switched gears, correct, and
20 you decided to try to bring the streaming service to iPhone
21 users via the web Safari platform; correct?

22 A. When we realized that after the attempts that we had made
23 that -- in proposing many different ways to be -- to comply
24 with the spirit of what they were asking us to do, that we
25 could not -- we saw no alternative to reach the iOS mobile

1 Microsoft production would be?

2 **A.** No, I do not.

3 **Q.** Do you have any knowledge what conversations took place
4 between Epic's lawyers and Microsoft's lawyers regarding what
5 the scope of the Microsoft production would be?

6 **A.** I do not.

7 **Q.** Do you know whether Microsoft gave Epic exactly the same
8 documents that Microsoft gave Apple?

9 **A.** I have no idea.

10 **Q.** Is it possible that someone may have searched your files
11 at Microsoft without knowing it?

12 **A.** Sure.

13 **Q.** Your IT department has access to your emails?

14 **A.** All of them, yes.

15 **Q.** Your IT department has access to the PowerPoints that you
16 serve on your share drive?

17 **A.** Yes.

18 **Q.** Do you know whether those documents were searched for and
19 produced?

20 **A.** Yes, I do.

21 **Q.** Were they?

22 **A.** Yes. My understanding is that there were documents
23 searched for because they were shown to me, and I did not give
24 them to anyone.

25 **Q.** If you could pull back the black binder that you have,